

THE HON'BLE MR. JUSTICE V.V.S. RAO

FRIDAY, THE 30TH DAY OF DECEMBER, 2005

W.P.No. 27692 of 2005

Between:-

P. Subbaraya Sarma and two others.

--Petitioners

And

Municipal Corporation of Visakhapatnam rep., by its Commissioner, Visakhapatnam
and another.

--Respondents

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:O R D E R:

The petitioners herein are owners of flats in apartment block known as Bhaskara Suvass Apartments, Waltair Uplands, Visakhapatnam. They are also members of M/s. Bhaskara Suvasa Apartment Owners Welfare Association, the second respondent herein.

In this writ petition, they seek a writ of Mandamus to declare the action of the first respondent-Corporation viz., Municipal Corporation of Visakhapatnam (for short 'MCV') in allowing the existence of the residential flat in cellar area of apartment block, as illegal and arbitrary. They also seek a consequential direction to the MCV to take appropriate action against the persons who constructed the flat illegally in the cellar area. The petitioners have not arrayed the contravener or the person who constructed the cellar area as party respondent to this writ petition.

Be that as it is, it is brought to the notice of this court that against the notice issued under Section 452 of the Hyderabad Municipal Corporation's Act, 1955, made applicable to MCV, one K.S.M. Raju, the builder filed a suit being O.S.No. 105 of 2001 on the file of the Court of learned I-Additional Junior Civil Judge, Vishakapatnam and the same was decreed. As against the said judgment and decree, MCV preferred appeal being A.S.No. 487 of 2004 on the file of the Court of learned IV-Additional District Judge, Vishakapatnam, which is still pending. Therefore, the first respondent could not have taken any action against the said K.S.M. Raju for alleged contravention of the building bye-laws and approved plan.

In the background of the case, as seen above, no relief can be granted to the petitioners as prayed for. However, the first respondent is directed to see that their appeal being A.S.No. 487 of 2004 pending on the file of the Court of learned IV-

Additional District Judge, Vishakapatnam, is disposed of expeditiously. They may approach the said court by filing an application seeking expeditious hearing of the appeal.

The writ petition, with the above observations, is accordingly disposed of. No costs.

V.V.S. RAO, J

30-12-2005

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